

ORIGINAL  
Congress of the United States  
Washington, DC 20515

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January 31, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Michael K. Powell  
Chairman, Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Dear Chairman Powell:

As co-chairs of the Congressional Rural Caucus, we are particularly interested in seeking regulatory approval for services that will close the "digital divide." Congress recognized that in order to spur effective competition to cable it was critical to authorize satellites to carry local television station signals. Unfortunately, satellites simply lack the capacity to carry local stations into any place other than the largest-populated television markets.

We are troubled that, after over two years, the Commission still has not acted on applications for licenses to deploy broadband and local television service in *every* television market in the country using an innovative new wireless technology developed by Northpoint Technology. While we heartily commend the Commission for its recent order declaring that Northpoint can share spectrum with satellites, we are tremendously disappointed the Commission failed to meet the statutory deadline to rule on license applications of Northpoint's "Broadwave" affiliates to deploy this new service. Having settled the pivotal interference question, we cannot see why the licenses were not issued.

In an effort to expedite further deployment of local television service to rural areas that are typically unserved or underserved, Congress passed the Intellectual Property and Communications Omnibus Reform Act of 1999 (P.L. 106-113). Section 2002 of this Act required the Commission to grant or deny applications -- such as those submitted by Broadwave affiliates -- by November 29, 2000. We are not going to quibble with you about the plain language of that provision or its intent. Rather, we want to impress upon you the importance of completing action on these applications as quickly as possible.

In our judgment, an inquiry into possibly subjecting these applications to an auctioning process will cause needless and harmful delay. As you know, Section 309(j) of the Communications Act limits auctions to mutually exclusive applications. In this case, it appears that subjecting the Broadwave applicants to an auction is inconsistent with the above-referenced section of the Act, as the Broadwave applicants are being unfairly subjected to a more difficult licensing standard than the satellite applicants that applied on the same day to use the same spectrum. Finally, we point out that auctions have not facilitated the introduction of broadband to rural areas or cable competition in any part of the United States. We do not support an auction for these services.

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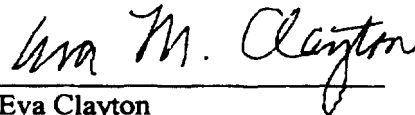
Today only 330 of 33,000 communities in the United States have effective cable competition, according to the most recent Commission report to Congress. The Broadwave applicants stand ready to offer needed services to not only to our rural constituents, but also to Americans in more populated areas who would clearly benefit from effective cable competition. Congress has previously indicated the importance of getting services such as those proposed by Broadwave to the public as quickly as possible. We urge you to fulfill this important mandate.

Thank you for your consideration of this important matter. We look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jo Ann Emerson".

Jo Ann Emerson  
Member of Congress

A handwritten signature in cursive script, appearing to read "Eva M. Clayton".

Eva Clayton  
Member of Congress



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

March 6, 2001

The Honorable Eva Clayton  
Co-Chair  
Congressional Rural Caucus  
U.S. House of Representatives  
2440 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairwoman Clayton:

Thank you for your January 31, 2001, letter concerning Northpoint Technology, Ltd., which, through its subsidiaries, Broadwave Albany, L.L.C., *et al.*, filed applications for licenses to deploy broadband and local television service. I appreciate your concern about the level of effective competition in the multi-channel video market, particularly as it affects the delivery of local television service to rural areas of the country.

Traditionally, licensing in the terrestrial wireless services requires a rule making proceeding to allocate spectrum and establish service rules before applications and waiver requests are accepted for filing. For that reason, none of the applications and associated waiver requests to provide terrestrial use of the 12.2-12.7 GHz band have been accepted for filing to date. On November 29, 2000, the Commission adopted a *Report and Order and Further Notice of Proposed Rule Making* authorizing a new terrestrial fixed Multichannel Video Distribution and Data Service ("MVDDS") in the 12.2-12.7 GHz band. In the *Further Notice of Proposed Rule Making* ("FNPRM"), the Commission set in motion the final regulatory process for licensing MVDDS. In doing so, the *FNPRM* concluded that the Commission complied with the November 29, 2000 deadline imposed by the "Rural Local Broadcast Signal Act."

In the *FNPRM*, the Commission noted that the decision of Northpoint and the other entities to file applications and waiver requests before spectrum was allocated suggests a different licensing approach. The Commission sought comment on the appropriate disposition of the waiver requests and applications filed by the aforementioned other entities. Thus, the Commission decided to hold in abeyance all of the waiver requests and applications submitted in this proceeding, pending resolution of these issues. Until such time as the Commission accepts the waiver requests and applications for filing, no decision will be made on whether to auction the spectrum. The Commission will consider all viewpoints concerning this matter at that time.

In another matter affecting the Commission's ability to address Northpoint's applications, Section 1012 of the "District of Columbia Appropriations Act, 2001," requires the Commission to provide for independent testing for interference potential of any terrestrial service technology proposing to use the direct broadcast satellite frequency band (12.2-12.7 GHz). Upon enactment

of the legislation, the Commission immediately began the process of selecting the independent tester. The law required the participation of the Institute of Electrical and Electronics Engineers ("IEEE") in the selection process, and this organization, as well as like-situated organizations, refused to participate. As a result, the initial selection was delayed, resulting in a failure to comply with the statute's February 19, 2001 deadline. The independent tester, MITRE Corp., has assured us that they will report the test results in early April 2001. The Commission then will issue a public notice seeking comments on the test results.

Without a doubt, the Commission is working expeditiously to develop the record in this proceeding so that we can act swiftly on the waivers and applications, and set out the process and rules by which MVDDS will be licensed and deployed. The pleading cycle for comments and reply comments on the *FNPRM* is March 12, 2001, and March 26, 2001, respectively.

I appreciate your interest and concern in this important area.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Powell", written in a cursive style.

Michael K. Powell  
Chairman



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

March 6, 2001

The Honorable Jo Ann Emerson  
Co-Chair  
Congressional Rural Caucus  
U.S. House of Representatives  
326 Cannon House Office Building  
Washington, D.C. 20515

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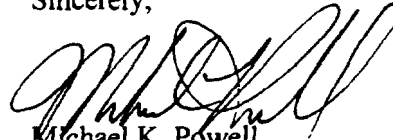
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Michael K. Powell  
Chairman